

IT 95-75

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )   Case No.  
          v.                  )   SSN  
XXXXXX                        )  
          Taxpayer            )   John E. White,  
                              )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of the Administrative Hearings as the result of a timely protest of a Notice of Deficiency ("NOD") by XXXXX' ("taxpayer").¹ The basis of the NOD was the Department's determination that taxpayer failed to report to the Department a final federal change in adjusted gross income for the taxable year ending 12/31/90. At issue is whether taxpayer is subject to tax for failing to file an amended return to report a final federal change to taxpayer's reportable adjusted gross income. 35 ILCS 5/506(a) and (b).

FINDINGS OF FACT:

1. The Department received information from the Internal Revenue Service ("IRS") indicating that for the subject taxable year final changes were made to taxpayer's federal adjusted gross income. See Dept. Ex. No 1.

2. The Department's records indicated that the taxpayer did not file a return to report the federal change. Id.

3. The Department issued the NOD, after which taxpayer filed a timely Protest.

4. The federal change to taxpayer's income was based on information reported to the IRS by the Illinois Department of Employment Security

("IDES"), regarding checks issued by that agency in taxpayer's name and social security number. Taxpayer Ex. No. 1 (IRS's Notice of Proposed Changes).

5. At hearing, taxpayer introduced documentary evidence, including an administrative decision issued by XXXXX, an IDES employee, which decision was rendered following a 1993 administrative proceeding held to determine whether taxpayer received certain payments from IDES during 1990. Taxpayer Ex. No. 2.

6. In the IDES administrative decision, XXXXX determined that taxpayer (Claimant therein) did not file a claim for the checks which were issued in his name during 1990, and that no evidence existed indicating that taxpayer received or cashed the checks issued by IDES in taxpayer's name during that period. Id. at 1-2.

7. For purposes of this matter, I adopt the findings and conclusions of the IDES administrative law judge regarding his determination that taxpayer never received the money issued by IDES (in the form of unemployment compensation checks in taxpayer's name and social security number). See id.

8. Taxpayer did not protest the IRS's Notice of Proposed Changes to his 1990 income. See Taxpayer Ex. No. 1 (taxpayer signed his name on page 4 of the Notice and indicated that he disagreed with all of the proposed changes, but did not return that page to the IRS pursuant to directions. The original page 4 of the Notice, with taxpayer's name handwritten in blue ink, was presented at hearing).

9. Taxpayer is a seasonal employee of a landscaping firm in Illinois, see Taxpayer Ex. No. 3, who does not speak English, and who was not represented by counsel at this Department hearing.

CONCLUSIONS OF LAW: The Department established its prima facie case in this matter when Dept. Ex. No. 1 was introduced under the

certificate of the Director. 35 ILCS 904. Section 506(b) of the Illinois Income Tax Act ("IITA") requires taxpayers to report any final changes in the amount of adjusted gross income ("AGI") reported or reportable on federal returns filed with the IRS. Changes were, in fact, made, and apparently finalized, regarding taxpayer's 1990 federal AGI. See Taxpayer Ex. No 1.

Taxpayer did not challenge the IRS's proposed changes to his federal AGI for tax year 1990. See *id.* Ordinarily, a taxpayer's failure to protest a proposed federal change would be evidence of taxpayer's agreement with that change. In this case, however, the evidence offered by taxpayer reveals that the proposed federal change was finalized although taxpayer never received the income IDES reported to have been issued to him.

Taxpayer introduced at hearing the original Notice of Proposed Changes issued to taxpayer, see Taxpayer Ex. No. 1, which stated that the basis for the federal change was an IDES report of checks that agency issued in taxpayer's name and social security number. The IDES's Notice of Decision, see Taxpayer Ex. No. 2, reveals that: (1) IDES concluded that taxpayer did not file a claim with IDES during 1990; (2) taxpayer did not sign checks issued pursuant to such a claim; and (3) IDES concluded that taxpayer did not receive any proceeds from the checks it issued in taxpayer's name and social security number. The IDES's administrative decision is the factual basis upon which I conclude that taxpayer never received the income which was the basis for the federal change in taxpayer's 1990 AGI.

The federal change to taxpayer's AGI was triggered by IDES's report of checks issued in taxpayer's name and social security number. For purposes of this hearing, I view Taxpayer Ex. No. 2 as an acknowledgment by IDES that its original report to the IRS was incorrect. Unemployment benefits which are reported, but not received, are not properly includable as gross income. See Treas. Reg. 1.85(b) ("'unemployment compensation' means any

amount received under a law of the United States, or of a State, which is in the nature of unemployment compensation.") (reprinted in [1993] 94-2 Stand. Fed. Tax Rep. (CCH) 6411, at 19,297)(emphasis added); see also e.g. Koch v. Commissioner, 56 T.C.M. (CCH) 506 (1988) (unemployment benefits received are includable as income). If taxpayer did not receive the income, the income is not properly reportable, by taxpayer, to the Department. See 35 ILCS 5/506(a).2

The IDES administrative decision is documentary evidence which rebuts the prima facie evidence of the Department. I therefore recommend that the Notice of Deficiency be cancelled, and that this matter be closed.

Administrative Law Judge

Dated Issued

1. Although this matter is captioned under the names of the joint filers of the Illinois 1040 income tax return, I shall refer to the taxpayer in the third person singular.
2. Section 506(a) of the IITA provides:

Any person required to make a return for a taxable year under this Act may, at any time that a deficiency could be assessed or a refund claimed under this Act in respect of any item reported or properly reportable on such return or any amendment thereof, be required to furnish to the Department a true and correct copy of any return which may pertain to such item and which was filed by such person under the provisions of the Internal Revenue Code. 35 ILCS 5/506(a)(emphasis added).